

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

LAWRENCE E. MATTISON,

Petitioner,

v.

ACTION NO. 4:20cv158

HAROLD W. CLARKE,
Director, Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner Lawrence E. Mattison (“Mattison”), previously a Virginia inmate, submitted a *pro se* petition pursuant to 28 U.S.C. § 2254, challenging his misdemeanor convictions in the Circuit Court for the City of Hampton for stalking and making annoying phone calls. ECF No. 1, at 1, 42. He was convicted following a bench trial on May 25, 2016, and sentenced to 12 months incarceration for stalking and a \$500 fine for annoying phone calls. ECF No. 12-1.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. On March 30, 2021, the Magistrate Judge entered a report and recommendation, recommending that respondent’s motion to dismiss be granted, Mattison’s motion for summary judgment be denied, and Mattison’s petition be denied and dismissed without prejudice. ECF No. 19. Mattison filed an objection to the report and recommendation on March 31, 2021, and a supplemental objection on April 8, 2021. ECF Nos. 21, 23. On March 31, 2021, Mattison filed a motion requesting briefing on whether a certificate

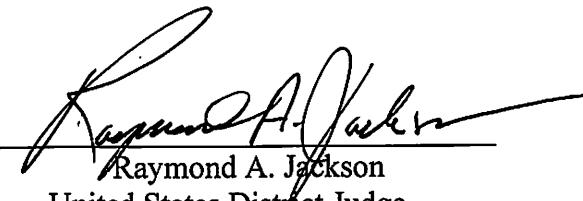
of appealability should issue in the event of an adverse decision. ECF No. 22.

The Court, having reviewed the record and examined the objections filed by Mattison to the report and recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the report and recommendation. The Court, therefore, **ORDERS** that respondent's motion to dismiss, ECF No. 10, is **GRANTED**, Mattison's motion for summary judgment, ECF No. 16, is **DENIED**, and Mattison's petition, ECF No. 1, is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

Finding that the basis for dismissal of Mattison's section 2254 petition is not debatable, and alternatively finding that Mattison has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000). Mattison's motion requesting briefing on the issue of a certificate of appealability, ECF No. 22, is **DENIED**.

Mattison is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. **If Mattison intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Mattison may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk shall mail a copy of this Final Order to Mattison and counsel of record for respondent.



Raymond A. Jackson
United States District Judge

Norfolk, Virginia
April 27, 2021